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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

BRYAN ROBBINS and MARVIN  
FEIGES, on behalf of themselves, all  
others similarly situated, and the  
general public,

Plaintiffs,

v.

THE COCA-COLA COMPANY, a  
Delaware Corporation,

Defendant.

Case No.: '13CV0132 IEG NLS

CLASS ACTION

**COMPLAINT FOR DAMAGES  
AND INJUNCTIVE RELIEF  
PURSUANT TO THE TELEPHONE  
CONSUMER PROTECTION ACT,  
47 U.S.C. §§ 227 *et seq.***

DEMAND FOR JURY TRIAL

## INTRODUCTION

1  
2 1. Bryan Robbins and Marvin Feiges (“Plaintiffs”) bring this Class  
3 Action Complaint for damages, injunctive relief, and any other available legal or  
4 equitable remedies, resulting from the illegal actions of The Coca-Cola Company  
5 (“Defendant”), in negligently, and/or willfully contacting Plaintiffs through SMS  
6 or “text” messages on Plaintiffs’ cellular telephones, in violation of the Telephone  
7 Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading  
8 Plaintiffs’ privacy. Plaintiffs allege as follows upon personal knowledge as to their  
9 own acts and experiences, and, as to all other matters, upon information and belief,  
10 including investigation conducted by their attorneys.

## JURISDICTION AND VENUE

11  
12 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiffs  
13 seek up to \$1,500 in damages for each text message in violation of the TCPA,  
14 which, when aggregated among a proposed class number in the tens of thousands,  
15 exceeds the \$5,000,000 threshold for federal court jurisdiction. Further, Plaintiffs  
16 allege a national class, which will result in at least one class member belonging to  
17 a different state than that of Defendant, providing jurisdiction under 28 U.S.C.  
18 Section 1332(d)(2)(A). Therefore, both elements of diversity jurisdiction under the  
19 Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has  
20 jurisdiction.

21 3. Venue is proper in the United States District Court for the Southern  
22 District of California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because  
23 Defendant, a Delaware corporation, is, and at all times herein mentioned was,  
24 doing business in the County of San Diego, State of California and because  
25 Plaintiff Bryan Robbins is a citizen and resident of the State of California and of  
26 this District.  
27  
28

**PARTIES**

4. Plaintiff Bryan Robbins is, and at all times mentioned herein was, a citizen and resident of the State of California and of this District. He is, and at all times mentioned herein was a “person” as defined by 47 U.S.C. § 153 (32).

5. Plaintiff Marvin Feiges is, and at all times mentioned herein was, a citizen and resident of the State of Maryland. He is, and at all times mentioned herein was a “person” as defined by 47 U.S.C. § 153 (32).

6. Plaintiffs are informed and believe, and thereon allege, that Defendant is, and at all times mentioned herein was, a Delaware corporation, and a “person,” as defined by 47 U.S.C. § 153 (32).

7. On information and belief, Defendant The Coca-Cola Company maintains offices in Atlanta, Georgia and is registered to do business in California.

8. Plaintiffs allege that at all times relevant herein Defendant conducted business in the state of California and in the County of San Diego, and within this judicial district.

**FACTUAL ALLEGATIONS**

9. One of the newest types of bulk marketing is to advertise through Short Message Services. The term “Short Message Service” or “SMS” is a messaging system that allows cellular telephone subscribers to use their cellular telephones to send and receive short text messages, usually limited to 160 characters.

10. An “SMS message” is a text message call directed to a wireless device through the use of the telephone number assigned to the device. When an SMS or “text” message call is successfully made, the recipient’s cell phone rings or otherwise notes the receipt of the text message, alerting him or her that a call is being received. As cellular telephones are inherently mobile and are frequently

1 carried on their owner's person, calls to cellular telephones, including SMS  
2 messages, may be received by the called party virtually anywhere worldwide.

3 11. Unlike more conventional advertisements, such text messages actually  
4 costs its recipients money, because cell phone users must frequently pay their  
5 wireless service providers either for each text message call they receive or incur a  
6 usage allocation deduction to their text plan, regardless of whether or not the  
7 message is authorized.

8 12. Over the course of an extended period beginning no later than in  
9 2012, Defendant and their agents directed the mass transmission of text messages  
10 to the cell phones nationwide of what they hoped were customers or potential  
11 customers of Defendant's Coke products.

12 13. In or around 2012, Plaintiff Bryan Robbins received unsolicited SMS  
13 or "text" messages to his wireless phone, for which Plaintiff provided no consent  
14 to receive the text messages, in an effort to promote the sale of Defendant's Coke  
15 products.

16 14. During that time period, Plaintiff Bryan Robbins received various text  
17 messages from The Coca-Cola Company; the solicitation included an  
18 advertisement to promote Coke Zero.

19 15. Plaintiff Bryan Robbins, in efforts to stop receiving text messages  
20 from The Coca-Cola Company, replied the word "STOP" to one of the text  
21 messages received; however, Plaintiff continued receiving text messages.

22 16. In or around 2012, Plaintiff Marvin Feiges received unsolicited SMS  
23 or "text" messages to his wireless phone, for which Plaintiff provided no consent  
24 to receive the text messages, in an effort to promote the sale of Defendant's Coke  
25 products.

26 ///

27 ///



1 which they were charged for the SMS or text messages, through the use of any  
2 automatic telephone dialing system as set forth in 47 U.S.C. Section  
3 227(B)(1)(A)(3) or artificial or prerecorded voice, which SMS or text messages by  
4 Defendant or its agents were not made for emergency purposes or with the  
5 recipients' prior express consent, within the four years prior to the filing of this  
6 Complaint.

7 26. Defendant and its employees or agents are excluded from the Class.  
8 Plaintiffs do not know the number of members in the Class, but believe the Class  
9 members number in the hundreds of thousands, if not more. Thus, this matter  
10 should be certified as a Class action to assist in the expeditious litigation of this  
11 matter.

12 27. Plaintiffs and members of the Class were harmed by the acts of  
13 Defendant in at least the following ways: Defendant, either directly or through its  
14 agents, illegally contacted Plaintiffs and the Class members via their cellular  
15 telephones by using unsolicited SMS or text messages, thereby causing Plaintiffs  
16 and the Class members to incur certain cellular telephone charges or reduce  
17 cellular telephone time for which Plaintiffs and the Class members previously paid,  
18 and invading the privacy of said Plaintiffs and the Class members. Plaintiffs and  
19 the Class members were damaged thereby.

20 28. This suit seeks only damages and injunctive relief for recovery of  
21 economic injury on behalf of the Class and it expressly is not intended to request  
22 any recovery for personal injury and claims related thereto. Plaintiffs reserve the  
23 right to expand the Class definition to seek recovery on behalf of additional  
24 persons as warranted as facts are learned in further investigation and discovery.

25 29. The joinder of the Class members is impractical and the disposition of  
26 their claims in the Class action will provide substantial benefits both to the parties  
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1 and to the court. The Class can be identified through Defendant's records or  
2 Defendant's agents' records.

3 30. There is a well-defined community of interest in the questions of law  
4 and fact involved affecting the parties to be represented. The questions of law and  
5 fact to the Class predominate over questions which may affect individual Class  
6 members, including the following:

- 7 a. Whether, within the four years prior to the filing of this Complaint,  
8 Defendant or its agents placed cellular telephone SMS or text  
9 messages without the recipients' prior express consent (other than  
10 SMS or text messages made for emergency purposes or made with  
11 the prior express consent of the called party) to a Class member  
12 using any automatic telephone dialing to any telephone number  
13 assigned to a cellular telephone service;
- 14 b. Whether Plaintiffs and the Class members were damaged thereby,  
15 and the extent of damages for such violation; and
- 16 c. Whether Defendant and its agents should be enjoined from engaging  
17 in such conduct in the future.

18 31. As people who received at least one unsolicited telephone SMS or text  
19 message without Plaintiffs' prior express consent, Plaintiffs are asserting claims  
20 that are typical of the Class. Plaintiffs will fairly and adequately represent and  
21 protect the interests of the Class in that Plaintiffs have no interests antagonistic to  
22 any member of the Class.

23 32. Plaintiffs and the members of the Class have all suffered irreparable  
24 harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class  
25 action, the Class will continue to face the potential for irreparable harm. In  
26 addition, these violations of law will be allowed to proceed without remedy and  
27 Defendant will likely continue such illegal conduct. Because of the size of the  
28



1 individual Class member's claims, few, if any, Class members could afford to  
2 individually seek legal redress for the wrongs complained of herein.

3 33. Plaintiffs have retained counsel experienced in handling class action  
4 claims and claims involving violations of the Telephone Consumer Protection Act.  
5 A class action is a superior method for the fair and efficient adjudication of this  
6 controversy. Class-wide damages are essential to induce Defendant to comply  
7 with federal law. The interest of Class members in individually controlling the  
8 prosecution of separate claims against Defendant is small because the maximum  
9 statutory damages in an individual action for violation of privacy are minimal.  
10 Management of these claims is likely to present significantly fewer difficulties than  
11 those presented in many class claims.

12 34. Defendant has acted on grounds generally applicable to the Class,  
13 thereby making appropriate final injunctive relief and corresponding declaratory  
14 relief with respect to the Class as a whole.

15 **FIRST CAUSE OF ACTION**

16 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

17 **47 U.S.C. § 227 ET SEQ.**

18 35. Plaintiffs incorporate by reference all of the above paragraphs of this  
19 Complaint as though fully stated herein.

20 36. Each such text message call was made using equipment that, upon  
21 information and belief, had the capacity to store or produce telephone numbers to  
22 be called, using a random or sequential number generator. By using such  
23 equipment, Defendant was able to effectively send thousands of text messages  
24 simultaneously to lists of thousands of wireless phone numbers of consumers  
25 without human intervention. These text messages were made en masse through the  
26 use of a short code and without the prior express consent of the Plaintiffs and the  
27 other members of the Class to receive such text messages.



1        37.        The foregoing acts and omissions of Defendant and its agents  
2 constitute numerous and multiple negligent violations of the TCPA, including but  
3 not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227  
4 et seq.

5        38.        As a result of Defendant's, and Defendant's agents', negligent  
6 violations of 47 U.S.C. § 227 et seq., Plaintiffs and the Class are entitled to an  
7 award of \$500.00 in statutory damages, for each and every violation, pursuant to  
8 47 U.S.C. § 227(b)(3)(B).

9        39.        Plaintiffs and the Class are also entitled to and seek injunctive relief  
10 prohibiting such conduct in the future.

11                                **SECOND CAUSE OF ACTION**  
12                                **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**  
13                                **TELEPHONE CONSUMER PROTECTION ACT**  
14                                **47 U.S.C. § 227 ET SEQ.**

15        40.        Plaintiffs incorporate by reference the above paragraphs 1 through 34  
16 inclusive, of this Complaint as though fully stated herein.

17        41.        Each such text message call was made using equipment that, upon  
18 information and belief, had the capacity to store or produce telephone numbers to  
19 be called, using a random or sequential number generator. By using such  
20 equipment, Defendant was able to effectively send thousands of text messages  
21 simultaneously to lists of thousands of wireless phone numbers of consumers  
22 without human intervention. These text messages were made en masse through the  
23 use of a short code and without the prior express consent of the Plaintiffs and the  
24 other members of the Class to receive such text messages.

25        42.        The foregoing acts and omissions of Defendant constitute numerous  
26 and multiple knowing and/or willful violations of the TCPA, including but not  
27  
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1 limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et  
2 seq.

3 43. As a result of Defendant's knowing and/or willful violations of 47  
4 U.S.C. § 227 et seq., Plaintiffs and the Class are entitled to treble damages, as  
5 provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47  
6 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

7 44. Plaintiffs and the Class are also entitled to and seek injunctive relief  
8 prohibiting such conduct in the future.

9 **PRAYER FOR RELIEF**

10 **Wherefore**, Plaintiffs respectfully request the Court grant Plaintiffs and the Class  
11 members the following relief against Defendant:

12 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**  
13 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

14 45. As a result of Defendant's, and Defendant's agents', negligent  
15 violations of 47 U.S.C. § 227(b)(1), Plaintiffs seek for themselves and each Class  
16 member \$500.00 in statutory damages, for each and every violation, pursuant to 47  
17 U.S.C. § 227(b)(3)(B).

18 46. Pursuant to 47 U.S.C. § 227(b)(3)(A), Plaintiffs seek injunctive relief  
19 prohibiting such conduct in the future.

20 47. Any other relief the Court may deem just and proper.

21 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL**  
22 **VIOLATION OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

23 48. As a result of Defendant's, and Defendant's agents', willful and /or  
24 knowing violations of 47 U.S.C. § 227(b)(1), Plaintiffs seek for themselves and  
25 each Class member treble damages, as provided by statute, up to \$1,500.00 for  
26 each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. §  
27 227(b)(3)(C).

1       49. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting  
2 such conduct in the future.

3       50. Any other relief the Court may deem just and proper.  
4

5                                   **JURY DEMAND**

6       Plaintiffs hereby demand a trial by jury on all issues so triable.  
7

8       Dated:       January 16, 2013

/s/ Ronald A. Marron

9                   By: Ronald A. Marron

10                   **LAW OFFICES OF RONALD A.**

11                   **MARRON, APLC**

12                   RONALD A. MARRON

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19                     
20                   *Attorneys for Plaintiffs and the Proposed*  
21                   *Class*  
22  
23  
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## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

BRYAN ROBBINS and MARVIN FEIGES, on behalf of themselves and all others similarly situated

(b) County of Residence of First Listed Plaintiff SAN DIEGO  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Law Offices of Ronald A. Marron, APLC  
3636 Fourth Ave., Suite 202, San Diego, CA 92103  
(619) 696-9006

**DEFENDANTS**

THE COCA-COLA COMPANY, a Delaware Corporation

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**'13CV0132 IEG NLS**

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
47 U.S.C. Section 227 - Telephone Consumer Protection Act ; 5 : 552

Brief description of cause:

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

01/16/2013

/s/Ronald A. Marron

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_